

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

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U.S. DISTRICT COURT
FLORENCE, SC

2006 FEB 23 1 P 3:56

Mark Aristo Ellis, #302484)	C.A. No. 3:05-1077
)	
Plaintiff,)	
)	
vs.)	
)	
Raymond Fischer; Benjamin Coakley;)	
Alan Walters; Nelson Brown;)	
Frankie Simmons; John Doe, Elise Crosby;)	
Gloria G. Henson; Timmothy Taylor; and)	
City of Georgetown Police Department;)	
)	
Defendants.)	

ORDER

This matter is before the Court for review of the Report and Recommendation (the "Report") filed by United States Magistrate Judge Joseph R. McCrorey, to whom this case had previously been assigned pursuant to 28 U.S.C. § 636(b) and Local Rule 73.02(B)(2) (D.S.C.). In the Report, Magistrate Judge McCrorey recommends that this case be dismissed without prejudice and without issuance and service of process. Judge McCrorey further recommends that this case be deemed a "strike" for purposes of the "three strikes" rule of 28 U.S.C. § 1915(g). The plaintiff has filed objections to the Report.

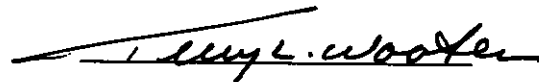
In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections. . . . The Court is not bound by the recommendation of the magistrate judge but, instead, retains

responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F.Supp. 137, 138 (D.S.C. 1992) (citations omitted). In light of this standard, the Court has reviewed the Report. After careful review of the Report and objections thereto, the Court accepts the Report.

It is therefore **ORDERED** that the Report be **ACCEPTED** in substantial part, the objections be **OVERRULED**, and this case be **DISMISSED** without prejudice and without issuance and service of process. The Court chooses not to deem this action a "strike" pursuant to 28 U.S.C. § 1915(g). In light of this Order, Plaintiff Mark Aristo Ellis' motion to appoint counsel, motion for preliminary injunction, and motion for ruling in his favor on all pending motions are hereby rendered moot. (Docs. #5, #6, #9).



Terry L. Wooten
United States District Judge

February ~~22~~ 2006
Florence, South Carolina